Petition

No. 81-995

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1981

CROWN CORK & SEAL COMPANY, INC.,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD and
UNITED STEEL WORKERS OF AMERICA, AFL-CIO-CLC,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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QUESTION PRESENTED

Section 9(c)(1) of the National Labor Relations Act, as amended, 29 U.S.C. § 159(c)(1), provides in part: "If the Board finds . . . that . . . a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof."

The question presented is whether, as the Court below held, Section 9(c)(1) only requires that the National Labor Relations Board give the *appearance* that it is holding a secret ballot election, rather than actually holding a secret ballot election.

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VS.

NATIONAL LABOR RELATIONS BOARD and
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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Petitioner Crown Cork & Seal Company, Inc. ("Petitioner") petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit, which enforces an order issued by the National Labor Relations Board ("NLRB") in a "technical" refusal to bargain case, ordering Petitioner to bargain with the United Steel Workers of America, AFL-CIO-CLC ("Union"), one of the Respondents herein. By engaging in a "technical" refusal to bargain, Petitioner sought to have the Union's certification as the exclusive collective bargaining representative of Petitioner's employees issued by the Acting Regional Director of the NLRB's 27th Region set aside.

OPINIONS BELOW

The opinion of the Court of Appeals is not yet reported. It is reproduced *infra* in Appendix A ("App.") at pp. A1-A10.

The National Labor Relations Board's Decision and Order are reported at 247 N.L.R.B. No. 8. A copy appears *infra* (App. D pp. D1-D13).

The decision and certification of the Acting Regional Director of the National Labor Relations Board, 27th Region, is unreported. A copy appears *infra* (App. E, pp. E1-E41).

JURISDICTION

The judgment (App. B, B1-B2) of the Court of Appeals was entered on October 19, 1981. A Petition For Rehearing and Suggestion For Rehearing *En Banc* was denied on October 13, 1981. (App. C, *infra*, pp. C1-C2). This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

The relevant provision of the National Labor Relations Act, as amended, 29 U.S.C. § 151, *et seq.*, (1947), is set forth at App. F, *infra*, pp. F1-F2.

STATEMENT OF THE CASE

Petitioner is engaged in the manufacture and sale of metal cans, crowns, and closures at 29 plants within the United States and 66 plants outside the United States. Pursuant to a decision and direction of election issued on October 18, 1978, an election was held on November 17, 1978, by the National Labor Relations Board at Petitioner's

facility located in Worland, Wyoming. The official tally of ballots established that of the approximately 60 eligible voters, 47 cast their ballots for Respondent Union, one voter cast his or her ballot for the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 307, and 10 ballots were cast against the participating labor organizations. There were 15 challenged ballots which the Board ruled were not determinative of the results of the election and thus were not opened and counted.

On November 24, 1978, Petitioner timely filed objections to the conduct of the election and conduct affecting the results of the election. One of Petitioner's objections provided:

> The NLRB and the Board agent interfered with the fair operation of the voting process, destroyed the necessary laboratory conditions and interfered with the secrecy of the ballots by utilizing printed ballots through which the markings and the choices made by voters could be plainly seen and conducting the election in a manner that the markings and choices made by voters would be plainly seen.

In support of this objection, Petitioner supplied to the NLRB sworn affidavits which established that because of the natural conditions existing at the voting site, the location of the voting booth and ballot bag vis-a-vis a window at the voting site,[1] and the transparency of the paper on

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[1]The election was conducted in Petitioner's entirely white Melmac "first aid" room. The NLRB agent set up the voting booth for the first voting session only two or three feet away from a large 4 x 16 foot clear window which was on the west

which the NLRB ballots were printed, Petitioner's observer could see through the ballots after they were marked, and, in fact, did observe how 20 employees had voted during the NLRB-conducted election. In spite of the affidavits filed by Petitioner in support of this objection, the Acting Regional Director of NLRB Region 27 overruled the objection stating:

> The ballots used in the election were printed on the ordinary NLRB ballot stock and were folded by the Board Agent prior to being presented to the voters for marking. After being marked by the voters, they were placed in the bag by the voters. While it may have been possible, upon close examination, to observe the ballot mark, it would appear that any specific individual claiming to have seen the markings on the ballots would have had to make a very special effort to do so. It is noted that the witness who stated that the markings on the ballots were observed in about 20 cases was the Employer observer. Such close surveillance is arguably misconduct[2] on the Employer observer's part, however, the Board has long taken the position that an objecting party cannot use its own misconduct as a basis for setting aside an election. (App. E, *infra*, at pp. E18-E19).

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wall of the room. There were no curtains or shades on the window which covered nearly the entire wall. The sun, which was in the western sky, reflected off the snow which covered the ground and shone brightly into the room. In addition, the lights in the first aid room were extremely bright and were all on when the polls opened.

[2]There is absolutely no evidence that the observer engaged in any "close examination," "close surveillance," or used any "special effort" when she observed how 20 employees voted.

Accordingly, the Acting Regional Director refused to refer this objection or any of Petitioner's 59 other objections to hearing. Thereafter, on May 9, 1979, Petitioner filed with the National Labor Relations Board a Request for Review of the Acting Regional Director's Supplemental Decision and Certification of Representative. The NLRB summarily denied Petitioner's Request for Review and sustained the Acting Regional Director's Certification of Respondent Union.

To secure judicial review of the certification issued by the NLRB, Petitioner refused to bargain with Respondent Union. Thus, on August 14, 1979, an unfair labor practice complaint and notice of hearing was issued by the Acting Regional Director of the National Labor Relations Board, Region 27, alleging violations of Section 8(a)(1) and (5) of the National Labor Relations Act ("NLRA"), 29 U.S.C. §§ 158(a)(1) and (5). Thereafter, on January 2, 1980, the NLRB issued its Decision and Order, reported at 247 N.L.R.B. No. 8 (App. D, *infra*), granting Counsel for General Counsel's motion for summary judgment.

On January 11, 1980, Petitioner promptly filed in the United States Court of Appeals for the Tenth Circuit a Petition for Review of an Order of the National Labor Relations Board. Thereafter, on April 2, 1980, Respondent National Labor Relations Board filed a cross-application for enforcement of the NLRB's order reported at 247 N.L.R.B. No. 8 and Respondent Union intervened.

On September 1, 1981, the court of appeals issued its decision. The court rejected Petitioner's position that the necessary laboratory conditions of the election were

destroyed and the secrecy of the ballot interfered with because ballots were utilized through which the markings and the choices made by voters could be, and were, plainly seen. The court held that since "there is no evidence that employees were aware that their votes may not have been secret, . . . it is not necessary to set aside the election." Citing *Sewell Plastics, Inc.*, 241 N.L.R.B. 144 (1979). In addition, the court held that since there was no evidence that the voters had reason to believe that their votes were observable while in their hands, Petitioner failed to raise a factual issue requiring a hearing. (App. A, *infra*).

Accordingly, the Court of Appeals for the Tenth Circuit granted enforcement of the NLRB's Order reported at 247 N.L.R.B. No. 8.

REASONS FOR GRANTING THE WRIT

I

THE COURT OF APPEALS HAS DECIDED AN IMPORTANT ISSUE OF STATUTORY CONSTRUCTION WHICH SHOULD BE DECIDED BY THIS COURT

This case concerns the meaning of the words "secret ballot" as set forth in Section 159(c)(1) of the NLRA, 29 U.S.C. § 151, et seq.[3] The court of appeals held that where employees are unaware at the time they vote that their voting preference has been discovered by others, it is unnecessary to set aside an NLRB-conducted election. The necessary result of this anomalous court of appeals' decision, if left standing, is to permit and encourage the

[3]Neither the NLRB nor the Tenth Circuit addressed the mandate of Section 9(c)(1) in their decisions below.

NLRB when conducting elections to merely give the appearance that a secret ballot election is being conducted, rather than actually conducting a truly secret ballot election in compliance with the statutory mandate contained in Section 9(c)(1) of the National Labor Relations Act. 29 U.S.C. § 159(c)(1).

The Tenth Circuit's unprecedented decision in the instant case is erroneous in two respects. First, the language, purpose, and legislative history of the NLRA make clear that merely giving the impression that a secret ballot election is being conducted is not enough. Rather, a truly secret ballot election *must* be conducted to fulfill the purposes and policies of the NLRA.

Section 9(c)(1) specifically provides that where a question of representation exists, the NLRB *shall* "direct an election by secret ballot." 29 U.S.C. § 159(c)(1). This language requires that the NLRB, through its agents, *must*, whenever a question concerning representation exists, conduct an election by secret ballot. Nothing in the NLRA indicates that Congress intended anything other than an absolutely secret "secret ballot" election. It is clear from a reading of the entire NLRA that a secret ballot election is the only way to effectuate the purposes and policies underlying the NLRA. To assure the orderly and peaceful selection of their representatives, free from interference and coercion, employees must be confident that their desires will not be disclosed. The NLRB must ensure non-disclosure of employees' votes by conducting elections in an atmosphere that is conducive to free expression. The NLRB in an early case succinctly articulated the atmosphere in

which employees were to cast their ballots in NLRB-conducted elections:

> In election proceedings, it is the Board's function to provide a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees. It is our duty to establish these conditions; it is also our duty to determine whether they have been fulfilled. When, in a rare extreme case, the standard drops too low, because of our fault or that of others, the requisite laboratory conditions are not present and the experiment must be conducted over again.

General Shoe Corp., 7 N.L.R.B. 124, 127 (1948).

Clearly, the uninhibited desires of the employees simply cannot be determined without a truly *secret* ballot. Where, as here, there is not a truly secret ballot, the experiment must be conducted over again.

In addition, the NLRB's Rules and Regulations, 29 CFR Part 102.69(a), specifically provide that "*All* elections *shall* be by *secret* ballot." (Emphasis added). Consistent with the express language of § 9(c)(1) and its rules and regulations, the NLRB, until quite recently, had, "in the interest of preserving the integrity of [the] election process," set aside elections where the secrecy of the ballot has been compromised. *See e.g., Silvino Giannasca d/b/a Imperial Reed and Rattan Furniture Co.*, 118 N.L.R.B. 911 (1957).

Similarly, the legislative history shows that Section 9(c)(1) was enacted to ensure that employees could freely select their representatives without coercion. The following colloquy occurred during the hearings before the Committee on Education and Labor, United States Senate, 74th

Congress, First Session on S. 1958 (Legislative History of the National Labor Relations Act, daily ed., March 25, 1935):

MR. CALDWELL: . . . Another thing there that I question is that the board may permit the employees to select their representatives by a secret ballot but does not have to grant them that privilege. I believe, gentlemen, that the only fair way for an employee to select his representatives without coercion is to do it by ballot, because any election held publicly, just as Senator Wagner called Mr. Colley's attention, the employee knows he is voting, the union knows he is voting, and if it is public they know how he voted. I do not think that is fair to the men. I think the Government elections ought to give the men the right of voting by secret election the same as any other election.

SENATOR WAGNER: The elections which the Government has held always have been by secret ballot.

MR. CALDWELL: And I think the law should perpetuate that practice.

SENATOR WAGNER: There was one conducted under my supervision, among the United Mine Workers, in which 15,000 workers voted without a single disturbance. That was a fine record.

MR. CALDWELL: And that was by secret ballot.

SENATOR WAGNER: Absolutely.

MR. CALDWELL: And does the Senator agree with me that the secret ballot is a right thing for the workers?

SENATOR WAGNER: Yes; absolutely.

MR. CALDWELL: Well, then, it ought to be in the law.

Congress recognized that if employees had a reason to believe or, indeed, had any suspicion that their voting preference might be discovered, their selection of representative could be influenced. To prevent any coercion, Congress mandated that all NLRB-conducted elections shall be by secret ballot.

The legislative history and the language of § 9(c)(1) make clear that the purpose of the secret ballot is to guarantee to employees that they will have an opportunity to cast a ballot, free from coercion, which expresses their decision regarding the question concerning representation. If the secrecy of the ballot is not strictly maintained, the remaining sections of the NLRA will have little meaning to the employees it was enacted to protect.

Secondly, the circuit court's decision rests upon a faulty legal theory which was recently adopted and announced by the NLRB in *Sewell Plastics, Inc.*, 241 N.L.R.B. No. 144 (1979). In that case, the NLRB ignored, with little discussion, prior NLRB and court precedent, and the mandate of Section 9(c)(1). In *Sewell, supra,* the NLRB upheld an election in which election observers could see the markings on ballots as they were placed in the ballot box. The NLRB held that because the voters were "unaware that observers could see how the ballots were marked," it saw "no reason to set aside the election." 241 N.L.R.B. at 887.

The *Sewell Plastics, Inc., supra,* decision and the circuit court's decision in the instant case are in direct conflict with decades of Board precedent which hold that the NLRA requires that not only must there be the *appear-*

ance of a secret ballot election, but indeed that the election must be by secret ballot. *Silvino Giannasca d/b/a Imperial Reed and Rattan Furniture Co., supra; Royal Lumber Co.,* 118 N.L.R.B. 911 (1957); *Gary Enterprises, Inc.,* 86 N.L.R.B. 431 (1949); *Northwest Packing Co.,* 65 N.L.R.B. 890 (1946); *Whiterock Quarries, Inc.,* 36 N.L.R.B. 395 (1941); and *Gluck Bros., Inc.,* 52 N.L.R.B. 1144 (1943).

This Court has on numerous occasions held that since the NLRA is silent as to procedure, the manner in which an election is to be conducted and the rules and regulations for the conduct of the election are normally within the discretion of the NLRB. However, this Court has consistently maintained that such rules, regulations, and interpretations of the NLRA are subject to the principles of majority rule and secrecy of the ballot, matters which are specifically addressed by the NLRA. *NLRB v. Savair Manufacturing Company,* 414 U.S. 270 (1973); *Southern Steamship Co. v. NLRB,* 316 U.S. 31, 37 (1942); *NLRB v. Waterman Steamship Corp.,* 309 U.S. 206 (1940); and *NLRB v. Falk Corp.,* 308 U.S. 453 (1940). Thus, although NLRB precedent interpreting the NLRA is ordinarily given great deference, where, as here, its interpretation is in direct conflict with the statutory mandate, it must be disregarded.

The circuit court and the NLRB's new and erroneous interpretation of Section 9(c)(1) of the NLRA is extremely shortsighted and illogical. In the instant case, by focusing on the voter's subjective knowledge at the time the ballots were marked, the NLRB and the court completely ignore the coercion future voters will feel if they know that a

voter's voting preference may be revealed sometime after the ballot is marked. Certainly, if the interpretation given Section 9(c)(1) by the NLRB and the Tenth Circuit is followed, future voters will be reluctant to express their true choice because someone may subsequently discover how they voted in a purportedly "secret" ballot NLRB-conducted election. The selection or rejection of a representative based on a coerced expression of preference is a direct contradiction to the purposes and policies of the National Labor Relations Act.

The legislative history, the purpose and plain language of the NLRA, and a long line of NLRB and court precedent establish that the words "secret ballot" in Section 9(c)(1) means just that. It does not mean that the NLRB need only give the appearance of a secret ballot election to comply with the statutory mandate. If, as we believe, the circuit court decision is in direct contravention of the Congressional mandate in Section 9(c)(1), this Court should grant this Petition for Writ of Certiorari for the purpose of interpreting this important statutory provision.

II

THE DECISION OF THE COURT OF APPEALS IS IN CONFLICT WITH THE DECISIONS OF FOUR OTHER CIRCUIT COURTS OF APPEALS.

The Tenth Circuit decision specifically states that since "there is no evidence that employees were aware that their votes may not have been secret, . . . it is not necessary to set aside the election." (App. A, p. A9). Thus, agreeing with the Acting Regional Director of NLRB Region 27, the

court so held notwithstanding the uncontradicted fact that an election observer actually observed the marked ballots of twenty voters. The court thus left standing a NLRB-conducted election in which the ballots were cast in such a manner that the voters could be identified with the choice they marked on their ballots. By its decision, the court has rejected the mandate of Section 9(c)(1) of the NLRA and has permitted the NLRB in conducting elections to merely give the appearance that the election is by secret ballot.

Four circuit courts of appeals have held that the words "secret ballot" mean that the choice on the employees' marked ballots shall be concealed from all others.

The Eighth Circuit in *Semi-Steel Casting Company v. N.L.R.B.*, 160 F.2d 388 (8th Cir. 1947), held that a signature on a ballot violated the express rule of secrecy under which the election was conducted. *Id.* at 392. There, the employee sought to clear up his ambiguously marked ballot by offering to testify regarding his intended choice. The court held that such testimony would effectively destroy the secrecy of the ballot which the NLRA requires. "Such evidence," said the court, "would also expose the employee to the hazard of union or employer coercion." *Id.* at 392. Thus, not only must the voter's choice be secret, but that choice may not be revealed to anyone, even at the voter's insistence. Accordingly, the Tenth Circuit is in conflict with the Eighth Circuit by holding that others are permitted to know how voting employees marked their "secret" ballots, provided the voting employees do not know that their ballot choices are not secret.

The District of Columbia Circuit, in *NLRB v. National Truck Rental Company,* 239 F.2d 422 (D.C. Cir. 1956), held that a marking which may serve to identify the voter renders the ballot void, even where the marking may have been deliberately made. *Id.* at 426. Thus, the District of Columbia Circuit, like the Eighth Circuit, prohibits the disclosure of the voter's ballot preference even where the disclosure to others is intended by the voter. Contrary to these Circuits, however, the Tenth Circuit has allowed the employee's choice to be known, even where the employee *has not intended* it to be known.

The Seventh Circuit, in *Magic Pan, Inc. v. NLRB,* 627 F.2d 105 (1980), upheld an NLRB ruling that a confused voter could not be assisted at the polls. The employee did not understand English and had desired the assistance of another employee in marking her ballot. Nevertheless, the Court held that, "[t]he Board's requirement of *complete secrecy* of the ballot cannot be waived." *Id.* at 109. (Emphasis added).

Lastly, the Third Circuit, in *American Bridge Division, U.S. Steel Corporation v. NLRB,* 457 F.2d 660 (1972), denied enforcement of the NLRB's order certifying the results of an internal union election held pursuant to the Labor Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. § 401, *et seq.* In that election, as in the election in the instant case, balloting was conducted in such a manner that others knew how some of the voters marked their ballots. In reviewing the conduct of that election, the court reiterated the LMRDA's definition of secret ballot:

> [the LMRDA] defines secret ballot as 'the expression . . . of choice with respect to any election or vote taken upon any matter, which is cast in such a manner that the person expressing such choice cannot be identified with the choice expressed.'

457 F.2d 666.

Employees in the Third, Seventh, Eighth, and District of Columbia Circuits are guaranteed that their secret ballot preferences will not be revealed to others. These circuit courts—applying the well-established rule that the NLRB is under a duty to preserve the integrity of the NLRB ballot as a matter of policy and as a matter of statutory mandate[4]—guarantee to employees actual secrecy, rather than just the mere *appearance* of secrecy, in NLRB-conducted elections. In the Tenth Circuit, however, the employees' marked ballots may permissibly be viewed by others provided the employees do not know at the time they vote that their choices may be revealed to others. This holding completely ignores the purpose of the NLRA's requirement of secret ballot elections. Clearly, if employees' voting preferences may permissibly be known by either the employer or the union, they are exposed to reward, punishment, or other coercion for the manner in which they voted. The decision of the Tenth Circuit places all employees within its jurisdiction on notice that their "secret" ballot choices may permissibly be known by others. Surely this knowledge will chill the employees' exercise

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[4] *See, Silvino Giannasca d/b/a Imperial Reed and Rattan Furniture Co.*, 118 N.L.R.B. 911 (1957); and *J. Brenner & Sons, Inc.*, 154 N.L.R.B. 656 (1965).

of their rights under the NLRA and compromise the integrity of the NLRB processes.

It is imperative that this Court now resolve the conflict between the circuit courts of appeals on this important issue which affects countless employees, their employers, and their unions. The Court should require the NLRB to comply with the requirements of the NLRA by conducting secret ballot elections that are truly secret.

To allow the Tenth Circuit's decision to stand would deny employees in that circuit the same treatment and statutory rights accorded other employees in other circuits. Petitioner respectfully submits that the conflict in the decisions among the circuits on this vital issue compels the granting of its Petition for Writ of Certiorari.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Dated: November 27, 1981.

Respectfully submitted,

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(Appendices Follow)

Appendix A

PUBLISH

United States Court of Appeals

Tenth Circuit

No. 80-1049

Crown Cork & Seal Company, Inc.,
Petitioner,

vs.

National Labor Relations Board,
Respondent,

United Steelworkers of America, AFL-CIO-CLC,
Intervenor.

On Petition for Review of an Order
of The National Labor Relations Board
and Cross-Application for Enforcement of an
Order of the National Labor Relations Board

[Filed Sept. 1, 1981]

OPINION

SETH, Chief Judge, McKAY, Circuit Judge, and CHRISTENSEN, District Judge.*

McKAY, Circuit Judge.

Petitioner-employer seeks review, and the National Labor Relations Board (Board) cross-petitions for enforcement,

*Honorable A. Sherman Christensen of the United States District Court for the District of Utah, sitting by designation.

of a Board order finding petitioner in violation of §§ 8(a)(5) and 8(a)(1) of the National Labor Relations Act (29 U.S.C. §§ 158(a)(5), 158(a)(1)) and ordering it to bargain with the union certified by the Board as the employees' representative (the Union). That union has intervened in this action. Petitioner claims it did not have to bargain with the Union because the Union was not properly certified. Petitioner asks that the election be set aside or, in the alternative, that the cause be remanded for a hearing.

Petitioner is engaged in the manufacture and sale of metal cans. On August 16, 1978, the Union filed a representation petition for petitioner's Worland, Wyoming, Plant production and maintenance employees. The Regional Director held a hearing, resolved pre-election matters, and ordered an election. Petitioner's request for a review of this decision was denied by the Board. The Board conducted an election on November 17. Of approximately sixty eligible voters, forty-seven voted for the Union, one employee voted for another union, and ten employees voted against any union representation.[1] Petitioner filed sixty objections to the conduct of the election. The Regional Director conducted an administrative investigation, overruled the objections, and certified the Union. Petitioner requested review by the Board, raising the same issues contained in its objections and contending that the Regional

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[1]The ballots of 15 additional voters were challenged. The challenged ballots largely represent votes of employees whom the employer sought to have included in the bargaining unit, but whom the Regional Director found to be supervisors, and therefore excluded.

Director should have directed a hearing on the objections. The Board denied the request for review. Petitioner thereafter refused to bargain, insisting that the Union was not properly certified. An unfair labor practice charge was filed against petitioner for failure to bargain. The Board granted the General Counsel's Motion for Summary Judgment against petitioner and ordered petitioner to bargain with the Union. The refusal to bargain is admitted by petitioner and was resorted to by it as a means of contesting the validity of the Board's certification. Thus, the propriety of that certification is the only issue before us.

Petitioner's request for an evidentiary hearing can be granted only if it "shows by *prima facie* evidence the existence of substantial and material factual disputes which, if resolved in its favor, would require the setting aside of the election." *NLRB v. Whitney Museum of American Art*, 636 F.2d 19, 23 (2d Cir. 1980). *See NLRB v. Pinkerton's, Inc.*, 621 F.2d 1322, 1325 (6th Cir. 1980); *NLRB v. Piggly Wiggly Red River Co.*, 464 F.2d 106, 108-09 (8th Cir. 1972); 29 C.F.R. § 102.69(d) (1980). "[T]his evidence must consist of more than a difference of opinion with the Regional Director's inferences and opinions." *Melrose-Wakefield Hospital Association v. NLRB*, 615 F.2d 563, 571 (1st Cir. 1980). *See NLRB v. Griffith Oldsmobile, Inc.*, 455 F.2d 867 (8th Cir. 1972). Finally, "no hearing is necessary where the Board assumes the truth of the party's contentions, and then rules as a matter of law that, assuming the facts alleged, the challenged conduct does not warrant setting aside the election." *NLRB v. Campbell Products Depart-*

ment, 623 F.2d 876, 879 (3d Cir. 1980). In such an instance, the Board's conclusion will not be overturned unless it amounts to an abuse of discretion. *Melrose-Wakefield Hospital Association v. NLRB*, 615 F.2d 563, 566-67 (1st Cir. 1980).

Balanced against an objecting party's interest in a hearing is the public policy favoring expeditious processing of representation petitions. "This strong public interest justifies the Board's practice of conducting administrative investigations and resolving election objections ex parte when it appears that the factual issues are unlikely to establish that the election was unfair." *Newport News Shipbuilding and Dry Dock Co. v. NLRB*, 594 F.2d 8, 11 (4th Cir. 1979). Ex parte resolution is particularly necessary in the context of objections to representation elections because "[e]mployee interest in a union can wane quickly as working conditions remain apparently unaffected by the union or collective bargaining. When the company is finally ordered to bargain with the union some years later, the union may find that it represents only a small fraction of the employees." *International Union of Electrical Workers v. NLRB*, 426 F.2d 1243, 1249 (D.C. Cir. 1970).

Petitioner here renews all of its sixty objections but only briefs four of them.[2] First, it claims that by including a copy of a Board document in its campaign materials, the Union gave the appearance of having the Board's support.

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[2]We deem the 56 unbriefed objections to be disposed of by this opinion. They merit no more attention than petitioner gave them and suggest a pattern of stalling to avoid the clear consequence of a proper election.

Second, it contends that the Union's pre-election promises to employees were objectionable. Third, it argues that a Union sign posted near the polling place on the day of the election contained erroneous wage statements. Fourth, it claims that ballot secrecy was violated by the use of ballots that allegedly allowed voters to see other voters' choices.

1. *The Campaign Brochure.*

The Union distributed a four-page brochure during its campaign, page three of which consisted of a portion of an NLRB publication. Petitioner contends that this juxtaposition offends the following principle:

> To duplicate a part of the Board's official notice and then to add to it a personal partisan message that may be interpreted by the employee as an endorsement by the Board of one of the parties to the election, and thus have an impact on the employees' freedom of choice is, we think, an undesirable use of Board documents designed for another purpose.

Rebmar, Inc., 173 NLRB 1434 (1968). The Regional Director concluded, however, that the challenged brochure "clearly identif[ies] the [Union] as the author of the entire handbill," Record, vol. 3, at 323, and thus could not have misled employees. *See Associated Lerner Shops of America*, 207 NLRB 348 (1973).

No hearing is required to resolve this issue. No one disputes the contents of the brochure—the only question relates to the inference to be drawn from the brochure. We are not persuaded that the Regional Director's inference amounts to an abuse of discretion.

2. *The Pre-election Promises.*

Petitioner claims that the Union engaged in an improper practice by making pre-election promises concerning employee benefits which would be conferred if the Union prevailed in the election. The source of these promises is a collective bargaining agreement (the Master Can Contract) entered into by petitioner and the Union covering employees at several of petitioner's plants. The Master Can Contract provides that it shall apply to petitioner's other plants, like the one in Worland, Wyoming, if and when the Union is certified as the collective bargaining agent at those plants. The Union did nothing more than explain to petitioner's employees what effect the Master Can Contract would have on them.

There is no claim that the Union misrepresented the Master Can Contract's provisions. Rather, petitioner urges that because the Union *could* make good on its promises they had the same distorting effect on the outcome of an election as improper employer pre-election promises of benefits. When an employer promises to improve working conditions if his employees reject an organizing union, the employees' freedom of choice in the election is interfered with and the election will be set aside. *See Wilkinson Manufacturing Co. v. NLRB*, 456 F.2d 298, 303 (8th Cir. 1976).

We decline petitioner's invitation to analogize a union's truthful promise to enforce an applicable contract to an employer's improper campaign promise of benefit if the union is not certified. The concern underlying the ban on most employer pre-election promises is absent here.

> The danger inherent in well-timed increases in benefits is the suggestion of a fist inside the velvet glove. Em-

> ployees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged.

NLRB v. Exchange Parts Co., 375 U.S. 405, 409 (1964). Here, if the Union were defeated it would have no opportunity to retaliate. Furthermore, the Union's promise of benefits under the Master Can Contract was not the result of its unilateral power but rather was the culmination of prior *bargaining* with petitioner. Thus, the concern voiced in *Exchange Parts* is simply not transferable to intervenor's promises here.

There is no factual issue as to the content of the challenged promises, and therefore a hearing on this issue is unnecessary.

3. *The Campaign Poster.*

Petitioner alleges that the Union's posting on the day of the election of a poster containing the statement "A [Union] Vote Guarantees You $7.49¢ Low, $10.05¢ High Per Hour" materially misrepresented the facts and thus violated the standard set down in *Hollywood Ceramics Co.*, 140 NLRB 221 (1962), and requires that the election be set aside. There is no dispute as to the content of the poster.

Petitioner introduced sworn declarations attesting that there was "no way at all that any employee [could] earn a wage of $10.05 per hour" at the Worland plant under the Master Can Contract. Record, vol. 3, at 475. The Union

provided evidence that cost-of-living raises provided for in the Master Can Contract brought earnable wages to the level stated on the poster. Petitioner did not contest this evidence other than by broad declarations like that quoted above. The Regional Director concluded that petitioner "failed to support its allegation that the sign displayed by [the Union] on the day of the election contained any material misrepresentations." *Id.* at 328.

Notwithstanding the sworn declarations, we find that no hearing is necessary to resolve this issue. Unsupported statements certainly pale before uncontradicted contractual language and it is the contractual language which is determinative of whether the challenged poster was misleading. The Regional Director did not abuse his discretion in this instance.

4. *Ballot Secrecy.*

Petitioner argues that necessary laboratory conditions of the election were destroyed and the secrecy of the ballots interfered with because ballots were utilized "through which the markings and the choices made by voters could be plainly seen" and that the election was conducted "in a manner that the markings and choices made by voters could be plainly seen." Record, vol. 3, at 298. The prima facie evidence supporting this objection consists of sworn affidavits of the plant manager and petitioner's election observer that the voting booth was set up close to windows in a bright room on a sunny day and that people looked in these windows. It is not asserted that these

people could see inside the voting booth or that the booth itself was not opaque. Petitioner's observer declared: "The ballots were yellow in color and the paper was thin. . . . [I]t was possible to see through the ballots to see how people voted and I did see through the ballots and did see how at least twenty voters had voted. Other people could also have seen it." Record, vol. 3, at 508. There is no indication as to where the observer was standing when she observed the twenty ballots or even whether the ballots were in the hands of voters when she observed them. There is no allegation that employees could be observed while voting. There is no evidence that any employee eligible to vote was aware of the asserted transparency of the ballots. The Regional Director found that "[T]he ballots used in the election were printed on the ordinary NLRB ballot stock." *Id.* at 432.

The possibility that the outcome of an election was affected or that voters were intimidated in making their choice in a less than secret atmosphere has led the Board to overturn elections in which voting arrangements could have led employees to believe they were being observed as they voted. *See Royal Lumber Co.*, 118 NLRB 1015 (1957); *Gianasca, d/b/a Imperial Reed & Rattan Furniture Co.*, 118 NLRB 911 (1957). But here there is no evidence that employees were aware that their votes may not have been secret, and thus it is not necessary to set aside the election. *See Sewell Plastics, Inc.*, 241 NLRB 144 (1979). Again, the petitioner's observer does not indicate when or how she saw through the ballots or

whether her manner of observation would raise a specter of coercion. Indeed, the Regional Director found that "any specific individual claiming to have seen the markings on the ballots would have had to make a very special effort to do so." Record, vol. 3, at 432. The company observer may have made such an effort, but absent evidence that the voters had reason to believe that their votes were observable while in their hands, petitioner has failed to raise a factual issue requiring a hearing. The Regional Director acted within his discretion when he found that the company observer's testimony that she saw through twenty ballots did not mean that employees were aware that their votes were not secret.

ENFORCEMENT AND ORDER GRANTED.

Appendix B

September Term—October 19, 1981

United States Court of Appeals
for the Tenth Circuit

No. 80-1049

Crown Cork & Seal Company, Inc.,
Petitioner,

vs.

National Labor Relations Board,
Respondent.

Before: Seth, Chief Judge, McKay, Circuit Judge, and Christensen, District Judge.*

THIS CAUSE came on to be heard upon a petition filed by Crown Cork & Seal Company, Inc., to review an order of the National Labor Relations Board issued against said Petitioner, its officers, agents, successors and assigns on January 2, 1980, and upon a cross-application filed by the National Labor Relations Board to enforce said Order. The Court heard argument of respective counsel on November 20, 1980, and has considered the briefs and transcript of record filed in this cause. On September 1, 1981, the Court issued an Order granting enforcement of the Board's Order. In Conformity therewith, it is hereby

*Honorable A. Sherman Christensen of the United States District Court for the District of Utah, sitting by designation.

ORDERED AND ADJUDGED by the United States Court of Appeals for the Tenth Circuit that the said order of the National Labor Relations Board in said proceedings be enforced, and that the Petitioner, Crown Cork & Seal Company, Inc., its officers, agents, successors, and assigns abide by and perform the directions of the Board in said Order contained.

/s/ Name illegible
Judge, United States Court of
Appeals for the Tenth Circuit

Dated: October 19, 1981

Appendix C

September Term—October 13, 1981

Before: Honorable Oliver Seth, Honorable William J. Holloway, Jr., Honorable Robert H. McWilliams, Honorable James E. Barrett, Honorable William E. Doyle, Honorable Monroe G. McKay, Honorable James K. Logan, Honorable Stephanie K. Seymour, Circuit Judges, and Honorable A. Sherman Christensen, District Judge.*

No. 80-1049

Crown Cork & Seal Company, Inc.,
Petitioner,

vs.

The National Labor Relations Board,
Respondent.

United Steelworkers of America, AFL-CIO-CLC,
Intervenor.

This matter comes on for consideration of petitioner's petition for rehearing and suggestion for rehearing in banc in the captioned cause.

Upon consideration whereof, the petition for rehearing is denied by the panel to whom the case was argued and submitted.

*Of the United States District Court for the District of Utah, sitting by designation.

The petition for rehearing having been denied by the panel to whom the case was argued and submitted, and no member of the panel nor judge in regular active service on the Court having requested that the Court be polled on rehearing in banc, Rule 35, Federal Rules of Appellate Procedure, the suggestion for rehearing in banc is denied.

/s/ Howard K. Phillips
Howard K. Phillips, Clerk

Appendix D

United States of America

Before the
National Labor Relations Board

Case 27—CA—6296

Crown Cork & Seal Company, Inc.

and

United Steelworkers of America, AFL-CIO, CLC

DECISION AND ORDER

Upon a charge filed on July 25, 1979, by United Steelworkers of America, AFL-CIO, CLC, herein called the Union, and duly served on Crown Cork & Seal Company, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 27, issued a complaint and notice of hearing on April 14, 1979, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on April 13, 1979, following a

Board election in Case 27—RC—5742 the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about April 17, 1979, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On August 20, 1979, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On September 18, 1979, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on September 21, 1979, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National

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[1]Official notice is taken of the record in the representation proceeding, Case 27—RC—5742, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va., 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint, Respondent admits that since April 17, 1979, the Union has requested and is requesting it to bargain. However, Respondent contests the representative status of the Union.

In a document dated October 17, 1979, the parties stipulated the issues presented in the instant case are the same as those presented in Case 27—RC—5742 and that neither party has additional evidence to present in this case. Thus, the parties agree that all material issues have been previously decided and there are no litigable issues of fact requiring a hearing.

Review of the record herein, including that in Case 27—RC—5742, establishes that on November 15, 1978, the Board denied the Employer's request for review of the Regional Director's Decision and Direction of Election. Pursuant to the Decision and Direction of Election, an election was held on November 17, 1978, in which the vote was 47 for Petitioner, 1 for the Intervenor, Teamsters Local Union #307, 10 against the participating labor organizations, and 15 challenged ballots which were not sufficient to affect the results of the election.

On November 22, 1979, the Employer timely filed objections to conduct affecting the results of the election, alleg-

ing, in essence, that the paper on which the ballots were printed was so thin that it was possible to see through the ballots, impairing the secrecy of the ballot, and that union agents and the Board agents conducting the election engaged in misconduct during the course of the election.

On April 13, 1979, the Acting Regional Director issued a Supplemental Decision and Certification of Representative overruling Respondent's objections and certifying the Union as the exclusive representative. Respondent thereafter filed a request for review which the Board denied on June 14, 1979.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[2]

All issues raised by Respondent in this proceeding were litigated in the prior representation proceeding. In fact, the parties have stipulated and agreed that the issues presented here are the same as those in Case 27—RC—5742 and that no further evidence is required. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

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[2]See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint, Respondent admits that since April 17, 1979, the Union has requested and is requesting it to bargain. However, Respondent contests the representative status of the Union.

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Review of the record herein, including that in Case 27—RC—5742, establishes that on November 15, 1978, the Board denied the Employer's request for review of the Regional Director's Decision and Direction of Election. Pursuant to the Decision and Direction of Election, an election was held on November 17, 1978, in which the vote was 47 for Petitioner, 1 for the Intervenor, Teamsters Local Union #307, 10 against the participating labor organizations, and 15 challenged ballots which were not sufficient to affect the results of the election.

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All issues raised by Respondent in this proceeding were litigated in the prior representation proceeding. In fact, the parties have stipulated and agreed that the issues presented here are the same as those in Case 27—RC—5742 and that no further evidence is required. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

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[2]See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

Respondent is a New York corporation with its principal offices located in Worland, Wyoming, where it is engaged in the manufacture and sale of metal cans. During the past 12 months, Respondent purchased and received goods and materials in excess of $50,000 directly from points and places outside the State of Wyoming.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

United Steelworkers of America, AFL-CIO, CLC, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All production and maintenance employees employed by Respondent at its Worland, Wyoming, plant, but excluding office clerical employees, salesmen, guards,

professional employees and supervisors as defined in the Act.

2. The certification

On November 17, 1978, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 27, designated the Union as their representative for the purpose of collective bargaining with Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on April 13, 1979, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about April 17, 1979, and all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about April 17, 1979, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since April 17, 1979, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in

unfair labor practices within the meaning of Section 8(a) (5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section II above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600

(5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Crown Cork & Seal Company, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Steelworkers of America, AFL-CIO, CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees employed by Respondent at its Worland, Wyoming, plant, but excluding office clerical employees, salesmen, guards, professional employees and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since April 13, 1979, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about April 17, 1979, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair

labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interefered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Crown Cork & Seal Company, Inc., Worland, Wyoming, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Steelworkers of America, AFL-CIO, CLC, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All production and maintenance employees employed by Respondent at its Worland, Wyoming plant, but excluding office clerical employees, salesmen, guards, professional employees and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at Respondent's Worland, Wyoming, office copies of the attached notice marked "Appendix."[3] Copies of said notice, on forms provided by the Regional Director for Region 27, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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[3]In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(c) Notify the Regional Director for Region 27, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D. C. January 2, 1980

John H. Fanning, Chairman

Howard Jenkins, Jr. Member

John C. Truesdale, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Steelworkers of America, AFL-CIO, CLC, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> **All production and maintenance employees employed by the Employer at its Worland, Wyoming plant, but excluding office clerical employees, salesmen, guards, professional employees and supervisors as defined in the Act.**

CROWN CORK & SEAL COMPANY, INC.
(Employer)

Dated ..... **By** .....
(Representative) **(Title)**

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, U.S. Custom House, Room 260, 721 19 Street, Denver, Colorado 80202, Telephone 303-837-3551.

Appendix E

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
TWENTY-SEVENTH REGION

Case No. 27-RC-5742

Crown Cork & Seal Company,
Employer,

and

United Steelworkers of America,
AFL-CIO, CLC,
Petitioner,

and

International Brotherhood of Teamsters, Chauffeurs,
Warehousemen and Helpers of America, Local 307,
Intervenor.

ACTING REGIONAL DIRECTOR'S SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVE

Pursuant to a Decision and Direction of Election[1] issued on October 18[2] a secret ballot election was held under the supervision of the Regional Director of the Twenty-Seventh Region on November 17. The Tally of Ballots,

[1]The unit found to be appropriate is: "All production and maintenance employees, excluding all office clerical employees, salesmen, guards, professional employees and supervisors as defined in the Act."

[2]All dates are 1978 unless otherwise noted.

which was served on each of the parties, reflects that of the approximately 60 eligible voters, 47 cast their ballots for the Petitioner, 1 cast their ballot for the Intervenor, and 10 ballots were cast against the participating labor organizations. It further reflects that the 15 challenged ballots cast were not determinative of the results.[3] On November 24, the Employer filed timely objections to conduct affecting the results of the election. A copy of the Objections was duly served on the Petitioner and the Intervenor.

The text of the Petitioner's Objections is as follows:

1. The NLRB, through its Board Agent, interfered with the fair operation of the voting process, destroyed the necessary laboratory conditions, and demonstrated bias in favor of Petitioner by allowing individuals to conduct campaign activities on behalf of the Petitioner in the voting area and in the approaches to the voting area during voting hours.

2. The NLRB, through its Board Agent, interfered with the fair operation of the voting process, destroyed the necessary laboratory conditions, and deprived eligible employees of an opportunity to vote by failing to announce to employees the times of opening and closing of the polls throughout the plant, the times at which certain employee groups were to be released to vote, and the particular location of the polls, and the movement and relocation of the location of the polls to a different room.

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[3]A corrected Tally was sent to the parties by certified mail on November 20.

3. The NLRB, through its Board Agent, interfered with the fair operation of the voting process, destroyed the necessary laboratory conditions, and demonstrated bias in favor of Petitioner by the display of Petitioner campaign materials in the immediate voting area.

4. The NLRB, through its Board Agent, interfered with the fair operation of the voting process, destroyed the necessary laboratory conditions, demonstrated bias in favor of the unions and against the Employer, and fostered an atmosphere of confusion providing inaccurate and confusing official NLRB observer buttons to the union observer.

5. The NLRB, through its Board Agent, interfered with the fair operation of the voting process, destroyed the necessary laboratory conditions and demonstrated bias in favor of the union and against the Employer by failing to provide, read, or explain to the observers copies of the official NLRB Instructions to Observers.

6. The NLRB, through its Board Agent, interfered with the fair operation of the voting process and destroyed the necessary laboratory conditions by failing to provide proper instructions to voters on voting procedures.

7. The NLRB, through its Board Agent, interfered with the fair operation of the voting process and destroyed the necessary laboratory conditions by allowing the election to be conducted in an atmosphere of confusion and disorder.

8. The NLRB, through its Board Agent, interfered with the fair operation of the voting process and destroyed

the necessary laboratory conditions by allowing and apparently acquiescing in the surveillance of voters and/or the appearance of surveillance of voters during the voting hours by union agents and supporters.

9. The NLRB, through its Board Agent, interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by failing to properly post signs identifying the location of the polls and the relocation of the polls to a different room.

10. The NLRB and the Board Agent interfered with the fair operation of the voting process, destroyed the necessary laboratory conditions and interfered with the secrecy of the ballots by utilizing printed ballots through which the markings and the choices made by voters could be plainly seen and conducting the election in a manner that the markings and choices made by voters would be plainly seen.

11. The NLRB, through its Board Agent, interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by directing the Employer's observer to sign a Certificate of Conduct of Election without allowing the Employer's observer to first consult with Employer representatives or the Employer's attorneys.

12. The NLRB, through its Board Agent, interfered with the fair operation of the election process, destroyed the necessary laboratory conditions and created the impression of bias in favor of the unions and against the Employer by openly associating and identifying the NLRB

with the union in the presence of voters at the Employer's facility.

13. The NLRB, through its Board Agent, interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by allowing individuals to take Petitioner's campaign material and to wear clothing bearing Petitioner's insignia into the voting area and into the voting booths and failing to remove same.

14. The NLRB, through its Board Agent, interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by allowing excessive talking and laughing by voters and/or Petitioner's observer and other confusing and distracting activities to take place in the voting area during voting hours.

15. The NLRB, through its Board Agent, interfered with the fair operation of the election process, destroyed the necessary laboratory conditions, interfered with the secrecy of the balloting process, and created confusion in the voting area by the way voters were lined up and situated while waiting in line to vote.

16. The NLRB, through its Board Agent, interfered with the fair operation of the voting process, destroyed the necessary laboratory conditions and interfered with the secrecy of the balloting process by failing to properly seal challenged ballot envelopes and to insure that challenged ballot envelopes were sealed.

17. The NLRB, through its Board Agent, interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by allowing excessive numbers of purported voters to enter and to remain in the voting area during voting hours.

18. The NLRB, through its Board Agent, interfered with the fair operation of the voting process, destroyed the necessary laboratory conditions and interfered with the integrity and secrecy of the balloting process by leaving the voting room and the ballot box during voting hours.

19. The NLRB, through its Board Agent, interfered with the fair operation of the voting process and destroyed the necessary laboratory conditions by failing to properly direct, supervise and control the lines of voters who were waiting to vote at the polling place.

20. The NLRB, through its Board Agent, interfered with the fair operation of the voting process, demonstrated bias against Employer, interfered with accurate and speedy identification of voters, and destroyed the necessary laboratory conditions by denying the Employer the right to have two observers.

21. The NLRB, through its Board Agent, interfered with the fair operation of the election process, destroyed the necessary laboratory conditions and interfered with the secrecy of the balloting process by failing to properly handle and process challenged ballots and challenged ballot envelopes.

22. The NLRB, through its Board Agent, interfered with the fair operation of the voting process by improperly

and unlawfully counting ballots as "Petitioner" votes, when in fact they should have been counted as "void".

23. The unions and their agents and officials unlawfully promised to reward employees who supported the unions in the election.

24. The unions and their agents and officials unlawfully promised to reward employees who signed union authorization cards and/or supported or voted for the unions.

25. The union, by certain supporters who are employed by the Employer in supervisory capacities, unlawfully supported Petitioner and threatened voters unless they supported Petitioner in the election.

26. The Petitioner and Intervenor, by their officials, agents, and supporters, made material representations of fact and law with respect to official NLRB processes.

27. The unions, by their agents, officials and/or supporters, engaged in electioneering in and around the voting area and the voting booths immediately prior to and/or during voting hours.

28. Petitioner, by its agents, officials and supporters made promises which Petitioner had the power to deliver to employees in order to induce employees to vote for Petitioner.

29. The Petitioner, by its agents, officials and supporters, unlawfully promised to reduce and/or waive union initiation fees in order to induce employees to support Petitioner.

30. The NLRB interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by confusing language set forth in its Notice of Election and/or ballots, including but not limited to eligibility, the unit, and the rights of employees.

31. The Unions, by their agents and supporters, interfered with the fair operation of the election and destroyed the necessary laboratory conditions by engaging in surveillance and/or giving the appearance of surveillance and/or remaining in the voting area during the scheduled election hours.

32. The NLRB, through its Board Agent, interfered with the fair operation of the voting process and destroyed the necessary laboratory conditions by allowing, acquiescing and ratifying the union agents' presence and surveillance of voters and/or the appearance of surveillance of voters during the scheduled voting hours.

33. The NLRB, through its Board Agent, interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by allowing excessive numbers of people to loiter in the voting area while the voting was taking place.

34. The NLRB, through its Board Agent, interfered with the fair operation of the election process, destroyed the necessary laboratory conditions and interfered with the secrecy of the ballot by failing to properly instruct voters with respect to balloting procedures and equipment.

35. The unions and their agents and supporters made and permitted egregious material misrepresentations of

and unlawfully counting ballots as "Petitioner" votes, when in fact they should have been counted as "void".

23. The unions and their agents and officials unlawfully promised to reward employees who supported the unions in the election.

24. The unions and their agents and officials unlawfully promised to reward employees who signed union authorization cards and/or supported or voted for the unions.

25. The union, by certain supporters who are employed by the Employer in supervisory capacities, unlawfully supported Petitioner and threatened voters unless they supported Petitioner in the election.

26. The Petitioner and Intervenor, by their officials, agents, and supporters, made material representations of fact and law with respect to official NLRB processes.

27. The unions, by their agents, officials and/or supporters, engaged in electioneering in and around the voting area and the voting booths immediately prior to and/or during voting hours.

28. Petitioner, by its agents, officials and supporters made promises which Petitioner had the power to deliver to employees in order to induce employees to vote for Petitioner.

29. The Petitioner, by its agents, officials and supporters, unlawfully promised to reduce and/or waive union initiation fees in order to induce employees to support Petitioner.

30. The NLRB interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by confusing language set forth in its Notice of Election and/or ballots, including but not limited to eligibility, the unit, and the rights of employees.

31. The Unions, by their agents and supporters, interfered with the fair operation of the election and destroyed the necessary laboratory conditions by engaging in surveillance and/or giving the appearance of surveillance and/or remaining in the voting area during the scheduled election hours.

32. The NLRB, through its Board Agent, interfered with the fair operation of the voting process and destroyed the necessary laboratory conditions by allowing, acquiescing and ratifying the union agents' presence and surveillance of voters and/or the appearance of surveillance of voters during the scheduled voting hours.

33. The NLRB, through its Board Agent, interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by allowing excessive numbers of people to loiter in the voting area while the voting was taking place.

34. The NLRB, through its Board Agent, interfered with the fair operation of the election process, destroyed the necessary laboratory conditions and interfered with the secrecy of the ballot by failing to properly instruct voters with respect to balloting procedures and equipment.

35. The unions and their agents and supporters made and permitted egregious material misrepresentations of

law and/or fact which destroyed the necessary laboratory conditions and interfered with the fair operation of the election and the rights of the voters.

36. The unions and their agents and supporters interfered with the fair operation of the election and the rights of the voters by making unlawful promises of benefits.

37. The NLRB, through its Board Agent, interfered with the fair operation of the election process, showed bias in favor of the unions and against the Employer and destroyed the necessary laboratory conditions by allowing pro-union campaigning in and around the polling place during voting time, while removing Employer campaign posters.

38. The Intervenor improperly induced employees to vote for Intervenor by unlawfully promising its supporters reductions and/or elimination of initiation fees.

39. The NLRB, through its Board Agent, interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by failing to open polls at the times designated on the Notice of Election and failing to have the polls open at the times designated on the Notice of Election.

40. The NLRB, through its Board Agent, interfered with the fair operation of the election process, destroyed the necessary laboratory conditions and interfered with the secrecy of the balloting by failing to properly inform and instruct challenged voters.

41. The Petitioner, through its agents and supporters, interfered with the fair operation of the election process, destroyed the necessary laboratory conditions, and intimidated voters during voting time by harassing people as they went to vote.

42. The NLRB, by its agent, interfered with the rights of the Employer and the employees and demonstrated and/or gave the appearance of bias or prejudice against the Employer by agreeing to act and by acting as observer for the Intervenor.

43. The NLRB, by its agent, interfered with the rights of the Employer and the employees and demonstrated and/or gave the appearance of bias or prejudice against the Employer by refusing to permit the Employer to record the pre-election conference and the ballot count.

44. The NLRB, by its Board Agent, interfered with the rights of the Employer and the employees, destroyed the necessary and laboratory conditions, and demonstrated bias and prejudice or the appearance thereof, and created confusion and uncertainty by erroneous preparation and completion of the tally of ballots, denial of the Employer's request to correct the same, refusing to correctly indicate the results of the election on the tally of ballots, and naming the Petitioner as the party acting for the NLRB Regional Director.

45. The NLRB, by its agent, destroyed the necessary laboratory conditions, interfered with the rights of the parties, and demonstrated, or at least gave the impression of, bias and created confusion by changing the voting place

and opening ballot box outside the presence of one or more of the parties.

46. The necessary laboratory conditions were destroyed and the appearance of bias and prejudice in favor of Petitioner was created by the display of an official NLRB Notice of Election in the voting area containing a mark in the box designated for Petitioner on the sample ballot on said Notice.

47. The NLRB, by its Board Agent, interfered with the necessary laboratory conditions by permitting employees to laugh and talk to employees outside the voting booths while voting inside the voting booth.

48. The NLRB, by its Board Agent, gave the appearance of identifying with the Petitioner, or at least, created confusion in that regard by utilizing a voting booth with a voting booth curtain with the same colors as the Petitioner's election and campaigning materials.

49. The NLRB interfered with the rights of the employees, demonstrated or at least gave the appearance of bias and prejudice against the Employer and destroyed the necessary laboratory conditions by utilizing Board Agents who are members of a labor union, the NLRBU, to process, handle, conduct and rule in the hearings, election, etc., in this case.

50. The NLRB interfered with the rights of the employees and the Employer, disenfranchised voters, and destroyed the necessary laboratory conditions by holding the election at a time prior to the employment of an appropriate substantial and representative complement

of employees and requiring an eligibility date prior to the employment of an appropriate substantial and representative complement of employees.

51. The NLRB interfered with the rights of the employees, demonstrated or at least gave the appearance of bias and prejudice against the Employer and destroyed the necessary laboratory conditions by making an improper determination of showing of interest by Petitioner and Intervenor and by refusing to disclose to the Employer the number of union authorization cards received by the Union from the Petitioner and Intervenor.

52. The NLRB interfered with the rights of the employees, demonstrated or at least gave the appearance of bias and prejudice against the Employer and destroyed the necessary laboratory conditions by improperly treating Petitioner as a "labor organization" despite the fact that Petitioner cannot bargain with the Employer on behalf of Worland, Wyoming employees for a Worland, Wyoming contract.

53. The NLRB interfered with the rights of the employees and the Employer and destroyed the necessary laboratory conditions by making erroneous findings, conclusions, rulings and decisions in the Decision and Direction of Election and in denying the Employer's Request for Review.

54. The Petitioner interfered with the rights of the employees and the Employer and destroyed the necessary laboratory conditions by receiving support or giving the

appearance of receiving support from agencies or agents of the State of Colorado and the federal government.

55. Petitioner made material and substantial misrepresentations of fact and law with respect to the Employer, the Petitioner, the Master Contract between Petitioner and Employer, and the scope, effect, and local application of said Master Contract, which created confusion, interfered with the rights of the employees and the Employer, and destroyed the necessary laboratory conditions.

56. The Petitioner destroyed the necessary laboratory conditions, gave the appearance of support by the NLRB and misrepresented Board processes by including NLRB documents, or apparent facsimiles thereof, with Petitioner election campaign materials.

57. The NLRB and/or the Petitioner created confusion and/or misrepresentation with respect to the unit in which the Worland, Wyoming employees of this Employer would be represented, the scope of the actual collective bargaining unit, and the competence of Petitioner to separately represent the Worland, Wyoming employees of this Employer in a separate Worland, Wyoming plant bargaining unit, thereby interfering with the rights of the Employer and the employees and destroying the necessary laboratory conditions.

58. The Intervenor and/or Petitioner interfered with the rights of the employees and Employer and destroyed the necessary laboratory conditions by material misrepresentations of fact, law, Board processes, the Employer and the unions.

59. The Petitioner and/or Intervenor interfered with the rights of the employees and Employer and destroyed the necessary laboratory conditions by unlawful promises and threats.

By the foregoing and other unlawful conduct, the Union and their agents, representatives and supporters and the National Labor Relations Board, and its Agents, or others, destroyed the necessary laboratory conditions and interfered with the holding of a free and fair election among the Employer's employees on November 17, 1978, and such unlawful conduct substantially and materially affected the outcome of the election.

By letter dated December 19, Counsel for the Employer would change in Objection 54 of the State of Colorado to the State of Wyoming; further, in Objection 26, the word "representatives" should read misrepresentations. Finally, with respect to other acts and conduct referred to hereinafter as Objection 60, the Employer states:

> "This last objection also applies to the fact that the wrong union is the Petitioner in this matter. If it is a local union that is to represent the employees (if certification issues in this matter), then it is the local union that should be the Petitioner. However, it was the International Union, denoted as United Steelworkers of America, AFL-CIO-CLC, that was the Petitioner and was so designated on the ballot."

By letter dated November 24, the Employer was advised of the requirement to furnish evidence to support its objections as set forth in the NLRB Case Handling Manual, Section 11392.5, and as set forth in the Board's Rules and Regulations, Section 102.69. In response, the Employer

supplied twelve prepared affidavits, and numerous pieces of printed material reportedly distributed by the Petitioner and Intervenor during the campaign. In addition, the Employer also presented copies of Inter-Union United Steelworkers of America, AFL-CIO, CLC manual and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America constitution, as well as various Board publications.

Pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, the undersigned Regional Director has carefully investigated the objections and hereby reports as follows:

Inasmuch as many of the Employer's objections are overlapping in content and supported by the same evidence such objections will be consolidated for the purposes of discussion and recommendation in this report.

OBJECTION NOS. 1, 2, 3, 4, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 21, 27, 31, 32, 33, 34, 37, 39, 40, 41, 42, 46, 47 and 48:

These objections all relate to alleged polling area conduct which basically fall in eight different areas: (1) the time of opening the polls and the location of the polling area; (2) campaign material in or near the polling area, including a marked sample ballot; (3) electioneering and other conduct by employees and representatives of the Unions in or near the polling area; (4) challenge procedure; (5) secrecy of the ballot; (6) observer identification; (7) physical appearance of the voting booth, and (8) Board Agent conduct.

With regard to the time of the opening of the polls and the location of the polling area, the evidence reflects that the election was scheduled in the Employer's first aid room from 3:15 p.m. to 3:45 p.m. and again from 10:30 p.m. to 10:45 p.m. It further reflects that the first session was held during the scheduled time in the designated location. However, prior to the second session, it was determined by the Board Agent that the polls should be moved into an immediately adjacent room because it might be possible for someone from outside the building to observe the polling through a window when the lights were on inside. The entrance to the voting area remained the same. To further avoid any possibility of surveillance of the polling area, cardboard was put over a window by the Board Agent. Representatives of the Employer and the Petitioner were present while this took place and they appeared to acquiesce in what changes were made. As a result of this, the evening session opened several minutes late. Representatives of both parties left the polling area at the same time. The polling did not commence until after the representatives had left. While no announcement was made regarding the moving of the polling area to an adjacent room, there is no evidence that this caused any employees not to vote; in fact, the evidence reflects that 58 out of the 60 employees on the eligibility list voted and that the two who did not vote were absent from work on that day. The Board has long held that objections relating to the change of time or location of the polling do not warrant setting aside an election unless it can be shown that a sufficient number of employees failed to vote who could affect the outcome of the election.

With regard to campaign material in or near the polling area, the evidence furnished reflects that a number of employees appeared to vote with campaign messages in the form of buttons and pins pinned on their hats or clothing. It further reflects that the observer for the Steelworkers reportedly was in the polling area during the entire time wearing a Steelworkers' pin on his hat. Finally, it reflects that a Steelworkers' campaign sticker was found affixed to the voting booth and that the Notice of Election just outside the polling area had an X marked in the Steelworkers box. Both of these matters were noted between the first and second sessions and were removed prior to the opening of the second session. No evidence was presented or developed to show that either the campaign sticker or the marking on the Notice existed while the first session was taking place. It is well established that wearing campaign buttons and other materials by employees or even an observer in the voting area does not warrant setting aside an election. See. *R.H. Osbank Manufacturing Company,* 114 NLRB 940; *Delaware Mills, Inc.,* 123 NLRB 943. Further, there obviously is not a basis for setting aside an election where campaign stickers and a mutilation of the Board's sample ballot are observed only in between voting session and they are removed as promptly as possible.

With regard to alleged electioneering and other conduct by employees, the evidence reflects that there may have been some laughing and noise while employees were waiting in line to vote. While the Employer presented evidence regarding the length of the voting line and the manner in

which employees were queued up to vote, this would appear to be irrelevant to the conduct of a fair election. No evidence was provided or developed with regard to representatives of either union ever being in the polling area or near it during the time the polls were open other than the presence of Steelworkers' representatives, along with Employers representatives prior to the slightly delayed opening of the second session. There is no evidence that during this time any electioneering took place. Further, no surveillance of the actual polling could have taken place since no eligible employee had yet been permitted to vote.

With regard to the physical appearance of the voting booth, the evidence provided is that the curtain leading into the booth had red, white, and blue stripes on it, which are the colors of the flag of the United States of America and purportedly are the same colors used by the Steelworkers Union in its flag. This on its face is frivolous.

With regard to the lack of secrecy of the ballot, the Employer presented witnesses who state because of the thinness of the paper used in the ballot and the manner in which employees inserted their ballots in the ballot bag, it was possible to determine how some employees voted. One witness alleged she could tell how 20 of the employees marked their ballots. No evidence was presented regarding any knowledge about the contents of any challenged ballots which were placed in special envelopes.

The ballots used in the election were printed on the ordinary NLRB ballot stock and were folded by the Board

Agent prior to being presented to the voters for marking. After being marked by the voters, they were placed in the bag by the voters. While it may have been possible, upon close examination, to observe the ballot mark, it would appear that any specific individual claiming to have seen the markings on the ballots would have had to make a very special effort to do so. It is noted that the witness who stated that the markings on the ballots were observed in about 20 cases was the Employer observer. Such close surveillance is argueably misconduct on the Employer observer's part, however, the Board has long taken the position that an objecting party cannot use its own misconduct as a basis for setting aside an election. *Showell Poultry Co.*, 105 NLRB 580.

With regard to the observer identification, the evidence presented is that Petitioner's observer was given a button which stated only the word "Union" rather than "United Steelworkers of America". No evidence was furnished or developed to show that such a designation on the observer confused any of the voters or caused them to vote in a manner other than what they had already decided.

With respect to the challenge procedure, no evidence was presented to reflect that challenges were made in any other manner than normal at a Board-conducted election, which is that a party must make its challenge prior to the time that the voter has placed his ballot in the bag and that once the challenge has been made, the Board Agent gives the challenged voter a special envelope in which to insert his ballot and seal it and instructs the voter about what has taken place and what he is to do. Related

to the objection regarding the challenge procedure is an objection that the challenged ballots were not sealed properly in the presence of voters, and another objection that the Board Agent acted as an observer for the Teamsters Union. No evidence was presented to support any of the above allegations and, as a matter of fact, the Board Agent did not make any challenges in behalf of the Teamsters or any other union.

With regard to Board Agent conduct, it is specifically alleged that the Board Agent left the voting room and the ballot box unattended during voting hours. The only evidence developed to support this is that on several occasions during the balloting, the Board Agent stepped out of the door of the room where the balloting was being conducted because of some commotion which was going on in the voting line. There is no probative evidence that he did not keep his eye on the ballot box during these momentary forays. Additionally, both the Company and Petitioner observers were present and neither provided any evidence that the ballot box was tampered with. In view of the foregoing, I find nothing in the objections relating to polling area conduct which could have interfered with the election and therefore determine that Objection Nos. 1, 2, 3, 4, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 21, 27, 31, 32, 33, 34, 37, 39, 40, 41, 42, 46, 47, and 48 be overruled.

OBJECTION NOS. 5, 11, 20, 22, 44, and 45:

These objections all relate to alleged Board Agent conduct, either prior to the opening of the polls, between the two sessions, or after the polls closed. Prior to the opening of the polls, it is alleged the Board Agent refused the Em-

ployer the opportunity to have two observers and that he did not give the one observer allowed a copy of the National Labor Relations Board's "Instructions For Observers". Just before the opening of the second session, it is alleged the seal on the ballot box was opened without a representative of the intervening Teamsters Union being present. After the close of the second session, it is alleged that the Employer observer was directed to sign the "Certification of Conduct" form without having an opportunity to consult with the Employer's attorney and that the Tally of Ballots was incorrectly filled out. It is also alleged that the Board Agent counted two void ballots.

The facts developed in the investigation with regard to these matters are as follows: (1) the Employer was denied a request for two observers by the Board Agent, who made his decision based on the relatively small size of the unit and the fact that neither of the other parties desired more than one observer; (2) the Board Agent did not hand any observer a copy of the "Instruction For Observers"; however, such instructions were mailed to the Employer, as well as to the other parties, well in advance of the election date. Why the Employer did not give its observer a copy of these instructions is not known. The Board Agent did give verbal instructions to the observers prior to the election, which the Employer's observer apparently does not recall; (3) there was no evidence presented or developed which would reflect that the Employer's observer's purported lack of instruction was in any way detrimental to the Employer; (4) no representative of the Teamsters was present in between

the two sessions because of an auto accident. Had the Board Agent waited to break the seal on the election bag until the Teamsters arrived, the second session would have been delayed for a substantially longer period of time than it was. I note that one of the other objections by the Employer is the delay which did take place; (5) after the election, the Board Agent did ask the two observers to read the "Certification of Conduct" form and sign it if they agreed with it. Both signed; (6) the Tally of Ballots handed to the parties at the conclusion of the election was inaccurately filled out insofar as the name "United Steelworkers of America, AFL-CIO" was placed on the line where the Board Agent was to sign his name rather than on the line just above this. This relatively insignificant error was later noted and a corrected Tally of Ballots was filled out and sent to all parties; (7) the Employer, during the count, did dispute the counting of two ballots, stating they should be declared void. The Board Agent determined they were valid and counted them. Since these two ballots could not effect the outcome of the election, it is unnecessary to determine what the actual facts are regarding the two disputed ballots.

There would appear to be nothing in any of the foregoing which would interfere with the employees' free choice in an election, and accordingly, I determine Objection Nos. 5, 11, 20, 22, 44, and 45 be overruled.

OBJECTION NOS. 23, 24, 25, 28, 29, 36, 38, and 59:

All of these objections relate to alleged threats or promises of benefit made by one or the other of the two unions involved in the election. The evidence provided by the

Employer to support these objections appears to be contained in statements from several employees. One employee alleges, "Both Steelworkers Reps. Powell and Hilton told me and other employees before the election if we signed their Steelworkers Union card now, before the election, we would not have to pay any initiation fee at all. In other words, we would get in free without cost." Another employee alleges he overheard ". . . employees telling other employees that if they did not sign the union card or join the union and crossed the strike line they would find their cars on jacks and 'if you ain't got no tires you can't cross the line.'" Other allegations are made by employees that they were promised a victory party by the Petitioner and that the Employer's existing Master Can contract would apply to them if the Petitioner won the election.

With regard to the alleged waiver of initiation fees prior to the election, the Petitioner's agents who allegedly made the promise state that all they told any employee was that it was the Union's policy to waive initiation fees for all newly organized employees and this policy applied both before and after an election. This version is similar to that the Petitioner stated in a handbill distributed at the plant gate on October 26, 1978. The pertinent part of this handbill reads, "There will be no initiation fee for employees working at the time the contract goes into effect."

The Board has held that a union's waiver of initiation fees does not interfere with employees' free choice in an

election if it is not limited to just the period prior to the election. See *Irvindale Division, Law Industries, a Division of Phillips Industries, Inc. and B.F. Goodrich Company,* 209 NLRB No. 182. Clearly, the Petitioner's version of what was stated verbally, as well as what was put out in its handbill, does not limit the waiver of initiation fees to the period prior to the election. While the version of the Employer's witness specifically involves such a limitation, I find no reason to schedule a hearing to resolve this credibility issue. With regard to this determination, it is noted that the Employer's witness did not name who the "other employees" were who may have heard the remark, nor was this information developed during the investigation. Therefore, even if one employee were promised a waiver of his initiation fee if he (she) signed up before the election, such a promise in the circumstances of this case could not have had a significant impact on the election.

With regard to the threat of picket line violence, it is noted that the witness furnished by the Employer failed to identify whom among the employees made the alleged remark or toward whom the remark was directed. Further, the witness could not pinpoint when this remark was made in relation to the election. Finally, this witness does not allege that the employee(s) making the remark was an agent of either union. It is also noted that the remark could only have had reference to a post-election picket line since there was no picketing or threat of picketing prior to the election.

Clearly, the foregoing is insufficient to show that either of the unions made any threats which could interfere with the employees' free choice in the election. While the Board has set aside elections where threats were made by employees to other employees, it does so only where threats might reasonably be expected to generate a general atmosphere of confusion and fear. (See *C. L. Long, Inc.*, 173 NLRB 447.) Even if the witness provided by the Employer in this case were credited, the evidence he provided was not specific enough with regard to the time and number of employees involved to merit considering the possibility that an atmosphere of confusion and fear might have existed. It should also be noted that the Board recently ruled that pre-election threats of possible violence in the event employees cross a post-election picket line cannot affect the outcome of an election. (See *Hickory Springs Manufacturing Company*, 239 NLRB No. 103.) The alleged promises of a victory party without more is not something which would interfere with employees' free choice in an election. As to the alleged promise that the existing contract with the Steelworkers would apply to the Employers' Worland employees if the Petitioner won the election, see my discussion under Objections 35, 55, and 58. In view of the foregoing, I determine that Objection Nos. 23, 24, 25, 29, 36, 38 and 59 be overruled.

OBJECTION NOS. 26, 35, 54, 55, 56, and 58:

All of the foregoing objections allege that material misrepresentations of some type were made by one or the other of the unions during the election campaign. Objections 26, 56, and part of 58 specifically allege that there

were misrepresentations regarding the Board's processes. In support of these objections, the Employer furnished a lengthy affidavit from its general manufacturing manager of western regional operations, Frank Franklin, in which he lists nine allegations of such misrepresentations. In pertinent part, these allegations are as follows:

1. "The Steelworkers Union intentionally gave the impression to employees that the U. S. Government supported a vote in favor of the unions . . . /by/ including quotes from the U. S. Supreme Court, Presidents of the United States Abraham Lincoln, Franklin D. Roosevelt, Harry S. Truman, Dwight D. Eisenhower, John F. Kennedy, Lyndon B. Johnson, and the U.S. Congress."

2. "The Steelworkers Union in this election campaign made material misrepresentations about the Board processes by pictures and written materials that there would be a ballot box, and in fact, the N.L.R.B. agent only used a flimsy bag instead of a secured ballot box and by showing a picture of a voter in an N.L.R.B. election wearing a shirt labeled "USWA" that electioneering in the voting area is permissible."

3. "The Steelworkers Union misrepresented Board processes by telling employees, 'The results of your decision will not be so simple. Vote neither or Teamsters and you will give up the only chance you may have to vote on the future.'"

4. "The Steelworkers Union misrepresented Board processes engaged in campaign trickery by including in its election campaign materials between pages of Steelworkers

Union campaign messages and pictures, another page entitled 'Your Government Conducts An Election For You On The Job, Information For Voters In Labor Board Elections, Protection Of Your Rights, Etc., The N.L.R.B. Protects Your Right To A Fair Election And A Free Choice.' "

5. "The Steelworkers Union made misrepresentation about Board processes by stating that the voting procedure includes giving the employees' clock numbers to observers at the N.L.R.B. election. No clock numbers were asked for or given . . ."

6. "The Steelworkers Union made material misrepresentations about Board processes by telling employees the filing of unfair labor practice charges against the union somehow delayed the employees from exercising their rights under the National Labor Relations Act. . . ."

7. "The Steelworkers Union made misrepresentations about Board processes by stating that one side has to get 50 per cent plus 1 of the votes, which misstates the rule in the situation when there would be three choices rather than two on the ballot and misstates the Board process 'because it does not take into account the effect of challenged ballots and the requirement that the votes reflected on valid ballots cast. . . .' "

8. "The Steelworkers Union made serious misrepresentations about Board processes by telling employees that former employee Max Dicky had 'won his NLRB case' and would be reinstated with backpay . . . after the NLRB election. This is a serious misrepresentation because he had not won his case and no reinstatement or any backpay was then or has not been ordered and the case

has not even yet been tried before an Administrative Law Judge . . ."

9. "The Steelworkers Union also made misrepresentations about Board processes involving Case No. 27-CA-5912 arising from the discharge of Regina L. Hanson by telling employees that the hearing will be conducted by the N.L.R.B. 'very soon', after stating that the Steelworkers had filed 8(a)(3) unfair labor practice charges with the National Labor Relations Board on behalf of Regina Hanson. In fact, no hearing was ever held and never could be held because no complaint was ever issued."

Franklin's first allegation is based on a four-page handbill distributed by the Petitioner on November 6, 1978, which, on the second and third pages, gives quotes favorable to unions generally from the various Presidents named, as well as the U.S. Supreme Court and U.S. Congress. No evidence was provided which would reflect that any of these quotes are inaccurate. Further, there is nothing in the handbill which would reflect that the National Labor Relations Board endorses anything in the handbill.

Franklin's second allegation is based on several handbills that were distributed throughout the campaign showing an individual with the initials "USW" on his shirt placing a piece of paper in a box designated as a "ballot box". None of these pieces of campaign literature make any attempt to reproduce any Board documents.

Whether or not Franklin's third allegation is factual or not would appear to be irrelevant since such a statement

would not appear to constitute a material misrepresentation.

Franklin's fourth allegation is based on a four-page handout distributed to employees by the Petitioner on October 18, 1978, containing on the third page a reproduction of certain portions of the Board's pamphlet entitled "Your Government Conducts An Election" (a copy of the entire handout is attached to this report as Appendix A). [Appendix omitted in printing] Everything on the lefthand side of page 3, as well as everything on the righthand side of that page above the solid black line toward the bottom of that side is an accurate reproduction of the Board's pamphlet. Further, pages 1 and 2 clearly identify the Petitioner as the author of the entire handbill. While the Board, in *Rebmar, Inc.*, 137 NLRB 1434, set aside an election where a union had duplicated the portion of the election notice entitled "Rights of Employees" and superimposed on the top of it a sentence stating "The Government protects your rights to organize yourself in a union", it would appear that the case is not controlling in this situation. In *Rebmar, supra,* the union distributing the handbill nowhere identified itself on the handbill as its author.

The Board specifically noted in *Silco, Inc.*, 231 NLRB 110, in a footnote (See fn. 5, pg. 110), that it did not set aside an election in *Associated Lerner Shops of America, Inc.*, 207 NLRB 348, even though its ballot had been reproduced by an employer with some additional comments because the employer identified itself as the author of the additional comments.

Franklin's allegation in items number 5, 6, and 7 involve matters which, even if inaccurate, involve minutiae insufficient to have any substantial effect upon the outcome of the election.

His eighth allegation is based on the testimony of one employee who alleges that at an unspecified time before the election, "Union representatives Powell and Helton told me and other employees that Max Dickey had won his N.L.R.B. case and would be reinstated with backpay." The employee making this allegation failed to identify whom the "other employees" were and the investigation failed to develop any further evidence to support the allegation. Powell and Helton specifically deny that they told any employee this at any time prior to the election. They admit only that they told employees what was contained in a newspaper article of the *Northern Wyoming Daily News*, dated October 28, 1978. This article stated that a hearing would be conducted on January 16, 1979 before an Administrative Law Judge of the National Labor Relations Board regarding the discharge of Max Dickey, as well as other matters. A representative of the Petitioner is quoted in the article regarding the hearing. The *Northern Wyoming Daily News* is the local paper in Worland, Wyoming, the location of the Employer's plant involved in this election. As such, it can be reasonably presumed that most employees in the unit read it. Max Dickey was an alleged 8(a)(3) in Case No. 27-CA-5954, filed by the Petitioner against the Employer on September 12, 1978. Upon conclusion of the investigation of the aforementioned charge, the undersigned issued a Complaint dated October 25, 1978, alleging, among other matters, that

Max Dickey was discharged because of his membership in and activities on behalf of the Petitioner. The undersigned withdrew the complaint in this case and approved a settlement regarding it on February 7, 1979.

There appears to be little question that the alleged remark by Petitioner's representative that Max Dickey had "won" Case No. 27-CA-5954 would be construed by the Board as an inaccurate and misleading statement about its processes. See *Dubie Clark, Incorporated,* 209 NLRB No. 21 and *Mallory Capacitor Company,* 161 NLRB 1510. However, it would be difficult to conceive how, in the circumstances of this case, an isolated remark of this type at some unspecified time before the election could have interfered with a fair election. Of particular note is the undisputed fact that all unit employees had access, through reading a local newspaper, to a correct version of the status of Case No. 27-CA-5954. In view of the foregoing, I find no reason to conduct a hearing to resolve the credibility issue involved herein.

Abrams' ninth allegation is based on a handbill distributed by the Petitioner on August 7, 1978. This handbill in pertinent part reads, "As you know, Regena L. Hansen was discharged by the Company on July 5 or 6, the company told her, she was let go for talking too much. The Steelworkers filed charges 8(a)(3) with the National Labor Board (Federal Government) on behalf of Regena. *A hearing will be conducted by the N.L.R.B. very soon.*" (emphasis added)

Since the handbill was distributed before the petition was filed, it cannot be basis for setting aside an election

(see *Ideal Electric & Mfg. Co.*, 134 NLRB 1446) and therefore merits no further discussion.

Objections 35, 55, and part of 58 are based on alleged misrepresentation in the Petitioner's pre-election propoganda regarding matters other than the Board's processes and primarily appears to involve the contents of the existing contract between the Petitioner and the Employer (at other plants). The specifics regarding these alleged misrepresentations are contained in an affidavit provided by the Employer from its director of industrial relations, Harold Abrams. The substance of Abrams' allegations with regard to the existing contract are as follows:

1. The Petitioner, on the day of the election, by means of a sign posted in front of the Employer's premises, inaccurately informed employees that the contract guaranteed them wages ranging from $7.49 per hour to $10.05 per hour. (Abrams does not state what the correct wage rates were as of that date, nor did the Employer furnish this information from any other sources.)

2. The Petitioner distributed a document during the pre-election campaign entitled "Legal Guarantee" which misrepresented the following items in the master contract.

(a) Wage rate of quality control employees given as 8.109 per hour rather than 7.895 per hour.

(b) Wage rate of a coater operator given as 8.109 per hour rather than 7.895 per hour.

(c) Highest rate of pay shown as 9.928 per hour. (Abrams' statement does not reflect what he felt the high-

est rate of pay should have been shown as, nor did the Employer furnish this information from any other source.)

(d) Supplemental unemployment benefits shown as 28 hours per week after 2 years rather than after 10 years.

(e) Sickness and accident benefits shown as available up to 104 weeks regardless of length of employment rather than available only after two years.

(f) Seniority shown as principal factor involved in promotions rather than employees' ability.

(g) Grievance and arbitration procedure shown as applicable to all problems rather than related only to disputes arising out of the contract.

3. Petitioner distributed a document entitled "Fringes" which contained the following misrepresentations related to the master contract:

(a) All fringe benefits were shown as tax-free, except for pension income after retirement, whereas such contract benefits as holidays and vacations are not tax-free.

(b) Life insurance of $23,000 was shown as fully paid by the Employer, whereas, this is only true if employed more than 2 years.

4. Petitioner distributed a document to employees which stated the master contract applies to 11 of the Employer's plants, whereas it applies to only 7.

Abrams, in addition to the aforementioned allegations of misrepresentation related to the contents of the master

agreement, alleges that the Petitioner distributed documents which contained misrepresentations with regard to the date of the election, the Employer's use of outside assistance during the campaign, and the employees' rights to make decisions. Finally, Abrams' statement lists about 7 pages of alleged mispresentations contained in two letters signed by Claude Jolicceur, Sr., President of Steelworkers Local 6788 in Orlando, Florida. Most of these alleged misrepresentations relate to the layoff which apparently took place at the Employer's plant in Orlando after the petitioner won an election there.

Statements by Employer officials other than Abrams also cite matters felt to involve misrepresentations by the Petitioner, but a careful review of these statements reflects that the allegations overlap if not actually coincide with those made by Abrams. In view of this, it would appear to serve no purpose to even summarize what they are.

With regard to all the alleged misrepresentations, it is noted that though the Employer was given an extension of time in which to furnish evidence to support its objections and was allowed to submit evidence far beyond the extended deadline date, at no time did it submit any evidence as to the dates on which it first obtained the Petitioner's written material on which it bases most of its allegations of misrepresentation. The Petitioner, on the other hand, furnished evidence that copies of all of its campaign material were personally delivered by a unit employee to the Employer's plant manager, John Cordova, on the date the material was handbilled, or, if mailed

only, on the date following the mailing. Further, it furnished evidence that all handbills were openly distributed at the plant gate and various supervisors and plant officials were seen accepting this literature as they entered the premises.

The Petitioner presented evidence which reflects the only two pieces of its campaign material which were handbilled or mailed in close proximity to the election were the handbill referred to as "Legal Guarantee" (attached as Appendix B) [Appendix omitted in printing] and the second letter of Jolicoeur (attached as Appendix C) [Appendix omitted in printing]. According to the Petitioner, these documents were delivered to Cordova on November 14, three days before the election. Further, the Petitioner furnishd evidence that the Employer held three employee meetings, one for each shift, on November 15 for the purpose of giving its views about the upcoming election and the unions involved therein. And, at least at one of these meetings, there was considerable discussion between an employee and one of the Employer officials present about the contents of the second Jolicoeur letter. Perhaps it should be noted that the first Jolicoeur letter, dated August 25, was the specific object of an Employer rebuttal letter, dated November 3, signed by Cordova and that the letter in effect calls Jolicoeur a liar. The Petitioner also presented evidence that the Employer conducted earlier employee meetings for the purpose of persuading the employees to vote against the unions in the upcoming election.

The Board, in *General Knit of California*, 239 NLRB No. 101, returned to the standard of review for alleged

misrepresentations during election campaigns as stated in *Hollywood Ceramics Co.*, 140 NLRB 221, which is: "An election should be set aside only where there has been misrepresentation or other similar campaign trickery which involved a substantial departure from the truth at a time which prevents the other party or parties from making an effective reply so that the misrepresentation, whether deliberate or not, may reasonably be expected to have a significant impact on the election."[4]

With regard to what is considered sufficient time to make an effective reply, the Board has found two days (see *General Electric Company, Specialty Control Department*, 162 NLRB 912), and even one day in appropriate circumstances, to be sufficient (see *Kalvar Corporation*, 204 NLRB 805).

The aforementioned decisions rather clearly reflect that the Employer in this case had ample opportunity prior to the election in which to rebut all but one of the Petitioner's alleged misrepresentations. The fact that the Employer did hold employee meetings on November 15 not only demonstrates that the Employer had such opportunity, but actually utilized it, at least insofar as the Jolicoeur letter is concerned.

The one alleged misrepresentation to which the Employer did not have an opportunity to effectively reply was information contained on two signs displayed in front of its premises on the day of the election. These signs, admittedly

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[4]Id. at 224.

placed there by the Petitioner, appeared next to each other, as shown below:

VOTE UNITED STEELWORKERS OF AMERICA X MASTER CAN CONTRACT	A U.S.W.A. VOTE Guarantees you $7.49¢ Low $10.05¢ High Per Hour

The "Master Can Contract" to which reference is made is the existing contract between the Employer and the Petitioner covering both production and maintenance and office clerical employees of the Employer at other locations. In addition, coverage is specified for employees ". . . of any plant of the Company at which metal cans, crowns, or closures are manufactured for whom the Union may, during the life of the agreement, be certified or recognized." (Section 2, pg. 5 of the current contract, which is the same clause as contained on the first page of Appendix B [Appendix omitted in printing].) The Worland plant manufactures containers and therefore, the employees there would appear to be affected by the aforementioned clause. A perusal of this current agreement reflects that all pertinent information on wage rates is set forth in Section 1 and 2 of Article VI (attached as Appendix D [Appendix omitted in printing]). At first glance it would appear that the rates on the Petitioner's sign do not comport with anything in Appendix D [Appendix omitted in printing]. However, a closer examination shows that none of the rates after the column headed by the date November

15, 1977 have the "cost of living" increases added to them. As Section 2 reflects, "cost of living" increases can be added every three months. According to the Petitioner, the following cost of living increases have been added between November 15, 1977 and the date of the election: 2/15/78—7¢; 5/15/78—13¢; 8/15/78—17¢; and 11/15/78—13¢. The total of these increases comes to 50¢ per hour and when this total is added to the low and high rates under the column headed by the date of 9/1/78, these rates come to $7.49 and $10.05, the same rates as on the sign in question. The Employer provided no information which would reflect that the Union's "cost of living" information is incorrect and certainly cannot deny that "cost of living" increases were due on the dates previously mentioned. Further, the Employer provided no evidence which might reflect that the higher rated classifications (26, 25, etc.) do not exist at the Worland plant. In view of the foregoing, I can only conclude that the Employer failed to support its allegation that the sign displayed by the Petitioner on the day of the election contained any material misrepresentations.

While I have already determined that the truth or falsity of earlier campaign material distributed by the Petitioner is irrelevant since the Employer had ample opportunity to effectively reply, it should be noted that the material has been carefully analyzed and, as with the information on the sign, the Employer has failed to provide any probative evidence which would show any material misrepresentations were involved.

Objection 54, while not specifically alleging misrepresentation by the Petitioner, is somewhat related to this area. The evidence supplied by the Employer regarding

this objection has, for the most part, already been discussed, such as the Petitioner's handbill with quotes from U. S. Presidents, etc. The one bit of evidence which has not been mentioned is the allegation of an employee that when he went to the Wyoming State Job Service, he was told by "the man in charge of the office" that when the union got in at Crown Cork & Seal, he would receive "fabulous wages like $9.00 per hour." This witness does not specify when he was told this, but it apparently took place before he was employed by the Employer. Further, no other evidence was offered or developed which would show that the Wyoming State Job Service might have put out such information during the initial period before the election. In view of the isolated nature of the evidence, it does not appear to warrant further consideration.

For all of the reasons discussed above, I determine that Objection Nos. 26, 35, 54, 55, 56 and 58 be overruled.

OBJECTION NOS. 50, 51, 52, 53, and 57:

All of these objections relate to issues raised in a pre-election investigation or hearing and, as such, are clearly not basis for setting aside the election. I therefore determine that Objection Nos. 50, 51, 52, 53 and 57 be overruled.

OBJECTION NO. 30:

Objection No. 30 refers to language on the official NLRB Notice regarding the election sent to the Employer by this office. This Notice contains the standard information and as such, clearly would not interfere with the employees' free choice. I therefore determine the overruling of this objection.

OBJECTION NO. 43:

This objection alleges that the Board Agent refused to allow the Employer to record the pre-election conference. Even if true, this would not be basis for setting aside the election. I therefore determine that this objection be overruled.

OBJECTION NO. 49:

This objection relates to alleged Board office personnel being members of a labor organization. Whether or not this is correct is irrelevant to the conduct of a fair election and I therefore determine that this objection be overruled.

The employer catch-all objection, which I will entitle Objection No. 60, is for the most part based on material discussed previously. The one new area raised by the Employer relates to the authority of the Petitioner to bargain on behalf of the employees in Worland, Wyoming. How this could affect the employees' free choice is not made clear. I therefore overrule this object.

SUMMARY OF DETERMINATION AND CERTIFICATION OF REPRESENTATIVE

I have determined that all sixty of the Employer's objections be overruled and therefore, pursuant to the authority vested in the undersigned by the National Labor Relations Board, it is hereby certified that a majority of the valid votes cast for the Petitioner, United Steelworkers of America, AFL-CIO and that this labor organization is the exclusive representative of the employees in the unit involved herein within the meaning of Section 9(a) of the National Labor Relations Board.

REQUEST FOR REVIEW

Under the provisions of Sections 102.69 and 102.67 of the Board's Rules and Regulations a request for review of this Supplemental Decision must be filed with the Board in Washington, D.C. pursuant to Section 102.69(g), affidavits and other documents which a party submitted to the Regional Director in support of the objections are not part of the record unless included in the Regional Director's Decision or appended to the Request for Review or opposition thereto which a party submits to the Board. The Request for Review must be received in Washington, D.C. by April 26, 1979.

Dated at Denver, Colorado this 13th day of April, 1979.

(SEAL)

/s/ W. Bruce Gillis, Jr.

W. Bruce Gillis, Jr.
Acting Regional Director
National Labor Relations Board
Region 27
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Appendix F

Section 159(c)(1) of the National Labor Relations Act, 49 Stat. 449 (1935), as amended by Pub.L. No. 101, 80th Cong., 1st Sess., 1947, and Pub.L. No. 257, 86th Cong., 1st Sess., 1959; 29 U.S.C. § 151, *et seq.*, 29 U.S.C. § 159(c)(1), provides as follows:

> Wherever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—
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> (A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9(a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9(a); or
>
> (B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9(a);
>
> the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for

an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.